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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 72-1445

ARNOLD ARTHUR SONDEREGGER,

PLAINTIFF-APPELLANT-PETITIONER

V.

SAGITTARIUS PRODUCTIONS INC.,

SEELEG LESTER, RICHARD WESSON

DEFENDANTS-In-Lower Court-U.S.D.C./

AND CINERAMA RELEASING CORPORATION

DEFENDANT-APPELLEE-RESPONDENT

PETITION for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

ARNOLD ARTHUR SONDEREGGER

IN PROPRIA PERSONA

336 N. BENTON WAY

LOS ANGELES, CALIF. 90026

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1973

No.....

ARNOLD ARTHUR SONDEREGGER,

PLAINTIFF-APPELLANT-PETITIONER

V.

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DEFENDANTS-IN-LowerpCourt-U.S.D.C./

AND CINERAMA RELEASING CORPORATION

DEFENDANT-APPELLEE-RESPONDENT

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

OPINIONS BELOW

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, on November 30. 1972, which read:

The judgment of the District Court is affirmed.

And on January 22, 1973, the Court of Appeals for the Ninth Circuit made an order:

The Clerk is directed to file the Appellant's untimely Petition for Rehearing.

The Petition is denied.

In the United States District Court Central District of California on October 14, 1971 made an order dismissing Plaintiff's action which read:

This matter having come before the court on the motion of defendant CINERAMA RELEASING CORPORATION to dismiss this action on the ground that the first amended complaint fails to state a claim upon which relief can be granted, ...

n the United States District Court for he Central District of California there as an order on June 9, 1971 as follows:

It is ordered that entry of default and the default judgment entered against defendant SEELEG LESTER on May 27, 1971, be and they are hereby set aside, and that said defendant may promptly serve and file an answer.

Further in the United States District Court for the central district of California on March 15, 1972, after SAGITTARIUS PRODUCtions, Inc., failed to answer the oringinal complaint of the first amended complaint, the following was on the docket entry:

Upon consideration of Plaintiff's affidavit for default & proposed default judgment, the court takes no action; the case having been dismissed by order filed 10/13/71, and a notice of appeal having been filed on 11/12/71.

Even though a general answer was made by an attorney for SEELEG LESTER, AND RICHARD WESSON to the original complaint no answer was made to the First Amended

complaint.

JURISDICTION

Jurisdiction is conferred on the court by 28 U.S.C. Section 1338:

(a)The distict courts shall have original jurisdiction of any patents, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and relating claim under the copyrihgt, patent or trademark laws.

From Martindale-Hubbell 1971 page2525 of the United State copyright Law Digest, Marx v United States Court of Appeals, Ninth Circuit, April 12, 1938. 96 F2d 204. " There is an alternative method of securing statutory copyright for certain types of works (e.g. lectures, dramas, music, dramatico-musical, motion pictures, prhotographs, works of art), when not reproduced

for sale or public distribution, by a deposit in the Copyright Office and registration of the claim to copyright to copyright therein. (§12). Copyright in the latter instance runs from the date of such deposit and registration, the same being deemed a species of publication for the purpose of determining the commencement of the first 28 year term of copyright."

ss1331. Federal Question;...

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

This may well be a case of First Impression, because there appears no case in the Court of Appeals or Supreme Court that has exactly the same circumstances that is opposite to the Petitioner's claims.

ss1254. Courts of appeals; certiorari;

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

PENDENT JURISDICTION

In UNITED MINE WORKERS OF AMERICA V. GIBBS 86 S. CT. 1130 (1966) on page 1139 it reads, "the allowable scope of the state claim implicates the federal doctrine of pre-emption; while this interrelationship does not create statutory federal question jurisdiction, Louisville &N.R. Co. v Mottley, 211 U.S. 149, 29 S. Ct. 42, its existence is relevant to the exercise of discretion."

In the present case the pre-emption question is made manifest by the companion cases of Sears, Roebuck & co. V Stiffel Co., 84 S.C.T 784, and Compco Corp. v Day-Brite Lighting, Inc. 84 S.CT. 779, on page 789:

"But because of the federal patent laws a State may not, when the article is unpatented and uncopyrightable, prohibit the copying of the article or award damages for such copying."

Thus, the Sears & Compco cases supra only referred to copyrights while the issue in each of the two cases was a patent matter.

The Black dictionary says patent-office issues patents to inventors, and rules if there is sufficient novelty.

Quoting Doran v Sunset House Dist. Corp. 197 F. Supp. 940, 941, 944 (SD Cal. 1961), Aff'm 304 F 2d 251 (CA9, 1962).

"The standard of 'novelty' urged by appellants is applicable to patents, but not to copyrights. The copyright standard is one of 'originality':

The requirements for the "originality" necessary to support a copyright are modest. The author must have created the work by his own skill, labor and judgement, contributing something "recognizably his own" to prior treatments of the same subject.

However, neither great novelty nor superior artistic quality is required."

These differences cause a need for clarification to apply state law 28§1652 on unfair competition in the Federal Court.

QUESTIONS PRESENTED

Did the United States District Court for the Central District of California err in ordering CINERAMA RELEASING CORPORATION's motion to dismiss on the ground that the First Amended complaint failed to state a cause of action upon which relief can be granted? And did the United States Court of Appeals in affirming and denying the rehearing petition err?

The Petitioner's title CHANGE OF MIND and its works were copyrighted in 1950 and the Respondents had no legal right to Separate the title from its dramatic works, and this intangible property right was pursuant to Federal copyright law, which was promulgated upon the United States Constitution Article I, section 8, clause 8, and the impairment of personal property

in copyright infringement by separating the title from the works damaged the Petitioner from his sole access to the title CHANGE OF MIND.

The right to literary property is provided in the copyright laws, and the SUPREME COURT OF THE UNITED STATES by keeping the Respondents from pirating the Petitioner's title CHANGE OF MIND engenders respect for intangile property.

A question comes from each of the three issues which are (1) Copyright infringement,(2) in the alternative unfair competition, and(3) for permanent injunction.

In published volumes that appear in the depository and major libraries in each of the fifty states and the District of Columbia, and thus, the Respondents had Constructive Notice of Petitoner's CHANGE OF MIND was copyrighted in 1950, and since Respondents are professionals in the drama market it could be considered they copied the Petitioner's title.

In Copyright Entries Jan.-June 1950, Dramas, and Works for Oral Delivery on page 13:

"CHANGE OF MIND, DU23122. See Sonderegger, Arnold Arthur."

And in the cross-reference page 74;

"Sonderegger, Arnold Arthur. CHANGE OF MIND, a dramatic play in seven scenes. © Arnold Arthur Sonderegger; lc 6 Feb50 DU23122.

The film using the Plaintiff's title CHANGE OF MIND, that was produced by SAGITTARIUS PRODUCTIONS INC., and written by SEELEG LESTER andRICHARD WESSON, and distributed by CINERAMA RELEASING CORPOR_ ATION was showed for a week starting October 1, 1969 to 32 theatres in New York; 27 theatres in California; and 1 theatre in New Jersey, and later after the law suit was filed was showed August 23, through 29, 1972 at 1 theatre in California. (Listed in First Amended Complaint)

Then, in the catalog of Copyright En-

tries. Motion Pictures and Filmstrips, July-December 1970,

"CHANGE OF MIND. Sagittarius Productions. Released by Cinerama Releasing Corporation. 103 min., sd., color, 35 mm. (c) Sagittarius Productions Inc.; 1 Oct69; LP38181."

Respondents cannot assert the copyright statute grant of exclusive right that belongs to the Petitioner. The copyright statue law is based on the United States Constitution that provides for copyright protection, and the Federal government by the fifth and fourteenth amendments in regard to equal protection of the laws and due process of law in regards to property safeguards the Petitioner ownership of intangible property.

It seems one of the requisites of infringing the title of a works, is in using the title Word for word exactly and in the same formation.

Another requisite is that the title can-

not be one word or a person could copyright the dictionary away.

Another, the title cannot be a proper name or place, and cannot be generic as to be a species or kind.

And a title must be distinctive.

The title CHANGE OF MIND gets its primary meaning from the Petitioner- Author, and it uses common words used in an uncommon manner. Any descriptive words were used in a non-descriptive manner.

The Petitioner's title fulfilled the test of copyrightable by being arbitrary, and/or fictitious, and/or fanciful, and/or artificial, and/or distinctive combination of words.

The Petitioner's title and works were copyrighted and the Respondents had no legal right to separate the title from the works. And the Petitioner could have sold the title to a bona-fide purchaser for value.

By the Respondents distorting the

Petitoner's title by using it with an R restricted rated film in which the leading character in this mystery took God's name in vain four time.

This Impaired the Petitioner's title for use with his own drama.

Thus, Petitioner Prays for not only an accounting of the proportional profits of about a fifth for infringing the title divorced from the works, but also, for damage for injury to the personal property.

The Petitioner filed the law suit before the three year statute of limitations.

The original complaint was filed March 24, 1971, and the first amended complaint August 27, 1971. While Respondents in 61 theatres used the title with their film on Oct. 1, 1969 for a week, and then, used the film with the Petitioner's title August 23, thru 29, 1972 at the State Theatre in Los Angeles, California. A law suit is not over as long as it is being appealed, by 17 U.S.C. §101 of using the

title after the law suit has been filed means the$5,000 limit for drama infringement does not apply to Petititioner. See Rehearing Brief,(that is error Petitioner called Supplemental Reply Brief.)

Petitioner has searched to copyright cataloges of dramas and does not find any three word drams entitled CHANGE OF MIND except Rose Schneideman registered the title in 1960, which is ten years following the Petitioner's copyright, and notice is given to her to cease and desist from any use of the Petitioner's title.

A song has both words and music, and the matter of a title is not before this court.

Also, a television series may have a main title and each serial a sub-title, which is a matter not before this court.

The MOTION PICTURE ASSOCIATION OF AMERICA, Inc. 522 Fifth Aveneue, New York, N.Y.10036, in their Prospectus of the Title Registration Bureau, state, page 1;

"The difficulty experience by motion picture

producers and distributors in protecting valuable property rights in the titles of their film productions, in teh absence of copyright protection on the title itself, and the expense and delays of litigation in establishing usage rights, brought about the gradual development of a voluntary method of title registration in a central agency. The Title Registration Bureau was established by memebers of the association in 1925... and amended in 1970. Under certain terms and conditions, the registration service is also available to non-member producing and/or distributing companies, or individuals, who elect to use its facilities."

And on page 4 it reads:

"No title of a produced play or copyrighted as such unless the registrant therof either owns the motion picture rights thereto or has entered into negotiations for same." And continuing on page 5,

"Titles of pcitures intended for production are granted indefinite protection if

affixed to copyrighted material. Titles which are classified as "original" enjoy protection for a period of one year from registration date."...etc.

People involved in the arts are concerned with the title protection and at present there are insufficient safeguards and the Court should protect the title under copyright, since they are the most pervasive, all encompassing, all complete in accomplishing title protection.

It seems that a big studio that has a budget of over a million dollars for a picture would want to know if he can get a copyrighted title, or buy a copyrighted title and if he later wants to use a different title, he would be taking his chances in unfair competition.

It seems that the the U.S. Court of Appeals for the Ninth Circuit in affirming and denyiny rehearing and the U.S. District Court following a motion dismissed for failure to state a cause of action upon

which relief can be granted was in error.

As I view the copyright law this is a case of First Impression, because the cases cited by the Respondents can be distinguished out.

In Bexker v Loew's Inc., 133 F 2d 889 (7th. Cir. 1943)

Harry Becker wrote a book about people in the political news, and Dalton Trumbo wrote a drama. Becker first copyrighte his book with the title WE WHO ARE YOUNG, then, trumbo, used the title for his drama that was made into a movie.

The Court said,

"Where plaintiff's copyrighted book entitled WE WHO ARE YOUNG was published in 1936 and only about 700 copies were distributed, and virtually all sales ceasing after 1937, defendant's motion picture entitle WE WHO ARE YOUNg did not constitute unfair competion especially where plaintiff's book dealt wtih a general economic discussion while defendant's picture involved a romantic love story."

However, in the present case both Petitioner and Respondents are both in the Same Category of drama, which is different that the Becker case supra, and is distinguished out on the unfair competition matter.

In regards to copyright infringement the Court evaded the question, and referred back to a vacuum in one case of 1897 and drew false conclusions by omission of an earlier case in 1895 as will be presented.

The Court was compounding error In referring to Corbet v Purdy, 80 F 901, on 902, it reads:

In no case, so, far as this court is advised, has protection been afforded by injunction under the copyright laws to the title alone, separate from the book or dramatic composition which it is used to designate."

This doesn't mean it can't be done, because no case has done it, when the case also mentioned Harper v Ranous, 67 F 904 on page 905 reads;

"For it is the name in connection with the novel, and not the name alone, which the copyright protects."

In this case the title was Trilby, which is one word alone, that cannot be copyrighted or a person by one word at a time could copyright away the distionary. And it showed the title and the works are protected together, so, a person would not have a legal right to separate the title form the works. This was a rudimentary, but good beginning for the copyright law. And in the Corbett v Purdy supra case, the title was not even given and no test could be put on it.

Both cases were on the 1891 copyright law that was amended in 1909, which gave the copyright law a chance for stronger development.

Another case mentioned in Becker case supra was Warner Bros. Pictures v Majestic Pictures Corp. 2 Cir. 70 F 2d 310, in which Warner Bros. Pictures bought the

rights to the play GOLD DIGGERS, that was copyrighted, and also, copyrighted GOLD DIGGERS OF BROADWAY, and the Defendant wanted to us the title GOLD DIGGERS OF PARIS, and no claim of copyright infringement was made, because the titles are not exactly the same, but in unfair competition the court granted an injunction by enjoining the Defendants from using the words Gold Diggers in any title for unfair competition reasons.

(Note: Warner Bros. supra used the title Gold Diggers of Paris, later themselves.)

Anyway, This case is distinguished out for copyright infringement, because the titles in question were not exactly the same.

Further, in the present case the Petitioner's title CHANGE OF MIND was infringed word for word by the Respondents.

Thecase of Duff vs Kansas City Star Co., 299 F. 2d 320, which dealt with a newspaper name, which is extraneous to this case, and likewise, Gordon vs Warner Bros. Pictures,

Inc. 269 Cal Ap. 2d 31, which dealt with the right to make a contract, which is another matter.

(2)Petitioner pleads unfair competition in the alternative. In the California state court pleading unfair competition is the (1947) case of Johnston vs. Twentieth Century Fox Film Corporation 82 C.A. 2d 796; 187 P2d 474, which developed a standard the Federal Court could adopt, which may have been evoked from the rudimentary reason in Harper vs Ranous of 1895.

From the annotated section of the California Civil Code it i quoted,

"The title QUEEN OF THE FLAT TOPS was a arbitrary, fictitious, fanciful, artificial, distintive, and non-descriptibe combination of words, of which the autho and publisher of the book about the air craft carrier Lexington, and the Coral Sea battle were the owners, with righ to exlusive use for all purposes."

The case of Johnston supra pleaded the title and works were copyrighted. And continuing from the annot..ed section of Calif. Civil Code page626

"A person may have e property right and the right to the exclusive use of arbitrary or ficticious or fanciful or artificial or technical names or titles.

In the Johnston vs Twentieth Century Fox Film Coporation case(supra) both used the title word for word, and the court awarded $20,000 recovery for the title divorced from the works.

In Johnston vs TwentIeth Centry Fox Film Corporation 82C.A. 2d 906, on page 800, shows two different types of secondary meaning or extended meaning.

"A title of a copyrighted book attains a secondary meanign if it acquires a trade significane as an arbitrary designation and its use is secured to the owner of the copyright; acquisition of secondary meaning signifies attaining popularity; and word QUEEN OF THE FLAT TOPS have acquired a

a secondary meaning it may be said that such meaning is their primary meaning insofar as their use in connection with the activities of the aircraft carrier are conerned.

on Page 810:

"A title of a copyrighted book attaina secondary meaning if it acquies a trade significance as a arbitrary designation and its se issecured to the owner of the copyrighted matter."

Thus, teh wto types of secondary meaning are INDEPENDENT, because they do not RELY on each other.

The defendants in the Johnston case supra had no legal right to separate the title from the works, because it could have been sold or assigned to a bona-fide purchaser for value. (paraphrased from the case talking about another matter of an oral contract.)

In the Present Case of Sonderegger supra the Respondents had constructive notice of the Copyright publication and if

the title was not protected by copyright, it should have been protected by means of Secrecy, but it was published in the Calaloge of Copyright Entries for professinal competitors to see in all major libaries of the United States.

Therefore, it would be unfair competition to allow the Respondents to reap the benefit of the Petitioners literary work without compensation.

(3) An irreparable harm has resulted and will continue to result if a permanent injunction is not issued to enjoin all of the Respondents from using the letitioner title in any manner especially commercially.

Statutes and Constitution
17 USC. section 101, section 2 and 3.

U. S. C. Article I, s.8,c18.

U.S.C. 5th and 14th amendments.

Note: IN Jackson v Universal International Pictures 121 P2d 574, in California no claim of copyright was made, and no pleading of distinctiveness and the court made no ruling on those matters. (see briefs in lower ct.

Wherefore, it is prayed the decisions of the lower court be reversed and an injunction issue, and be remanded to the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT for proceedings no inconsistent with the decision of the SUPREME COURT OF THE UNITED STATES OF AMERICA.

Respectfully submitted by

Arnold Arthur Sonderegger

ANROLD ARTHUR SONDEREGGER

IN PROPIA PERSONA

336 N. BENTON WAY, 90026

LOS ANGELES, CALIFORNIA

Claudia J. Cramer

OFFICIAL SEAL
CLAUDIA J. CRAMER
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Feb. 18, 1974

[illegible] Burbank, Calif. 91505

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72-1445

APPENDIX

APPENDIX A

OPINION OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ARNOLD ARTHUR SONDEREGGER, Plaintiff

vs.

SAGITTARIUS PRODUCTIONS INC., SEELEG LESTER, RICHARD WESSON AND CINERAMA RELEASING CORPORATION, Defendants

---

CIVIL ACTION NO. 71-724-A.A.H.

ORDER DISMISSING PLAINTIFF'S ACTION

Filed Oct. 13, 1971: Entered Oct. 14, 1971

This matter having come before the court on the motion of defendant CINERAMA RELEASING CORPORATION to dismiss this action on the ground that the first amended complaint fails to state a claim upon which relief can be granted, and the issues having been duly heard by Honorable A. Andrew Hauk, District Judge.

IT IS SO ORDERED AND ADJUDGED, pursuant to the findings of fact and conclusions of law filed herein by defendant CINERAMA RELEASING CORPORATION, that the motion should be granted, accordingly, it is hereby ordered that this action be and it is hereby ordered that the action be and it hereby is dismissed at plaintiff's cost.

A.ANDREW HAUK
JUDGE OF THE UNITED STATES
DISTRICT COURT

APPENDIX B
OPINION OF COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNOLD ARTHUR SONDEREGGER, Appellant.

vs.

SAITTARIUS PRODUCTIONS INC., SEELEG LESTER, RICHARD WESSON AND CINERAMA RELEASING CORPORATION, Appellees.

ORDER OF AFFIRMANCE

Filed Nov. 30, 1972

Before: DUNIWAY, ELY, AND WRIGHT,
Circuit Judges.

The Judgment of the District Court is affirmed.

Ben C. Duniway

Walter Ely

Eugene A. Wright

UNITED STATES CIRCUIT JUDGES

APPENDIX B

OPINION OF COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD ARTHUR SONDEREGGER, Appellant

vs.

SAGITTARIUS PRODUCTIONS INC., SEELEG LESTER, RICHARD WESSON AND CINERAMA RELEASING CORPORATION, Appellees

---

ORDER

Before: DUNIWAY, ELY, AND WRIGHT, CIRCUIT JUDGES.

The Clerk is directed to file the appellant's untiley Petition for Rehearing.

The Petition is denied.

Ben C Duniway

Walter Ely

Eugene A. Wright

UNITED STATES CIRCUIT JUDGES

DEFAULT AND SETTING ASIDE JUDGMENTS OF SEELEG LESTER REMAINING IN UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ARNOLD ARTHUR SONDEREGGER, Plaintiff

vs.

SAGITTARIUS PRODUCTIONS INC., SEELEG LESTER, RICHARD WESSON AND CINERAMA RELEASING CORPORATION, Defendants

CIVIL ACTION NO. 71-724-A.A.H.

DEFAULT JUDGMENT against Defendant Seeleg Lester pursuant to FRCP no. 55 (d)(1)(7) and relating Calif. C.C.P. section 415.20.

Application having been made by Plaintiff, Arnold Arthur Sonderegger, that the default of Defendant, Seeleg Lester be entered pur- to rule 55 of the F.R.C.P., and it appearing by affidavit that the Defendant Seeleg Lester has failed to plead or otherwise defend within the requisite time and no extensions have

been granted, and that the relief demanded in the above mentioned complaint, which is $55,000 for copyright infringement, $25,000 for unfair competition and a permanent injunction issue enjoining Seeleg Lester in connection with his name and dramatic work from using the title, CHANGE OF MIND, and costs of its suit.

Said application is based upon Rule 55 (d) (1) (7) of the F.R.C.P, along with the relating California C.C.P. section 415.20 (b) and the pleadings, records, exhibits on file and the accompanying affidavit of Arnold Arthur Sonderegger.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the default of Seeleg Lester for failure to plead or otherwise defend be entered and that judgment in favor of Arnold Arthur Sonderegger be entered thereon for the relief demanded in the above mentioned complaint, which is $55,000 for copyright infringement, $25,000 for unfair competition and a permanent injunction issue enjoining Seeleg Lester

in connection with his name and dramatic work from using the title CHANGE OF MIND; and Plaintiff's cost of suit.

Filed May 27, 1971

A. ANDREW HAUK, JUDGE
OF THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Entered May 28, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ARNOLD ARTHUR SONDEREGGER, Plaintiff

vs.

SAGITTARIUS PRODUCTIONS INC., SEELEG LESTER, RICHRARD WESSON AND CINERAMA RELEASING CORPORATION, Defendants

CIVIL ACTION NO. 71-724-A.A.H.

Filed June 9, 1971

ORDER

good cause appearing, the application of defendant SEELEG LESTER for an order setting asie the entry of default and juegment by default entered against him, is granted.

IT IS ORDERED that entry of default and the default judgment entered against defendant SEELEG LESTER on May 27, 1971 be and they are hereby set aside, and that said defendant may promptly serve and file his Answer.

A. ANDREW HAUK,

UNITED STATES DISTRICT JUDGE

STATUS OF SAGITTARIUS PRODUCTIONS INC., REMAINING IN THE DISTRICT COURT

NO ACTION TAKEN

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ARNOLD ARTHUR SONDEREGGER, Plaintiff

vs.

SAGITTARIUS PRODUCTIONS INC., SEELEG LESTER, RICHARD WESSON AND CINERAMA RELEASING CORPORATION Defendants

---

Plaintiff requested default judgment on First Amended Complaint filed Aug.27, 1971

Docket Entry by Clerk Gene Guerraro

Upon consideration of Plaintiff's affidavit for default & proposed default judgment, the court takes no action; the case having been dismissed by order filed 10/13/71, and a notice of appeal having been filed on 11/12/71.

COPYRIGHT STATUTES:

For two reasons copyright infringement in regard to motion pictures by 17 U.S.C. Section 101 the Petitioner is not limited to $5,000.

"17 U.S.C. section 101...

in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work, and that such infringement could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of $5,000 nor be less than $250, and such damages shall in no other case exceed the sum of $5,000 nor be less than the sum

of $250, and shall not be regarded as a penalty. But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under the law, nor shall the limitation as to the amount of recovery apply to infringement occuring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him."

In the first place, Defendants had constructive notice of copyright infringement, which the Defendants knew about or should checked the copyright registry, because the Register of Copyrights had the title CHNAGE OF MIND with the author ARNOLD ARTHUR SONDEREGGER and the notice of copyright of a circle with a C inside it, which has been in main and law libraries in every State of the United States including the District of Columbia and territorial possession Puerto Rico.

In the second place the Petitioner filed the original complaint March 24, 1971, and THE JUDGE in the UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA A. ANDREW HAUK signed the order as amended directing service of summons and complaint by serving defendant SAGITTARIUS PRODUCTIONS INC. by Secretary of State, State of California, Sacramento, California on May 6, 1971.

Then, the First Amended Complaint was filed August 27, 1971, and the summons and complaint was deposited in the mail by the U.S. Marshal at Los Angeles registered mail #989239, which was signed for by Linda English, secretary and therefore agent to Henry White, a representative and namely the President of SAGITTARIUS PRODUCTIONS INC., at 375 Park Avenue, New York, N.Y. This was verified by U.S.Post Office of New York, officer in Charge George J. Haas by Complaints Officer Herman Eisenberg.

Therefore, if there is a reversal in this

case for the two above mentioned reason the $5,00 limit for recovery would not apply to the Petitioner.

17 U.S.C. section 2:

"Rights of author or proprietor or unpublished work.- Nothing in this title shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevetn the copying, publication, or use of such unpublished work without the conset, and to obtain damages therefor."

17 U.S.C. section 3:

"Protection of component parts of work copyrighted-Composite works or periodicals.- The copyright provided by this title shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting but without extending the duration or scope of such copyright...."